IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 278 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJA NARAN MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 278 of 2004

MR PRAVIN GONDALIYA for Petitioner No. 1-3

MS NANDNI JOSHI Ld. APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. By this Revision Application, the revisioners

have challenged the order passed by the learned Additional Sessions Judge, 6th Fast Track Court, Rajkot in Criminal Misc. Application No.8 of 2004, whereunder bail granted to the revisioners was cancelled by the learned Judge in exercise of powers under Section 439(2) of the Code of Criminal Procedure.

2. In that application it was alleged by Bhikhabhai Chothabhai Makwana, a witness in Sessions Case No.7 of 1997 that when he was in the Court on 23rd December,2003, the revisioners put him under pressure to compromise the matter and asked him to make the witness deposed as per his say and intimidated him at that point of time. Following that incident, said Bhikhabhai Chothabhai Makwana appears to have addressed a communication to Commissioner of Police on very next day i.e. 24th December,2003 narrating the incident. The Commissioner of Police seems to have directed concerned authority to look into the matter and whereafter a Chapter Case appears to have been registered somewhere in February,2004, whereafter an application under Section 439 (2) of Code of Criminal procedure was registered and the learned Additional Sessions Judge was pleased to record a finding that in fact, the incident, as alleged by Bhikhabhai Chothabhai Makwana, did occur. Learned Additional Sessions Judge noticed that a condition was imposed while releasing the revisioners on bail that they should not tamper with evidence or threaten them and this condition having been violated, relying on certain judicial pronouncements, exercised the powers under Section 439 (2) of the Code of Criminal Procedure and cancelled the bail. Aggrieved by the said order, present Revision Application is preferred by the accused persons.

3. Learned advocate Mr.Gondaliya appearing for the revisioners submitted that trial has commenced. As many as 5 to 6 witnesses are examined. Even the applicant Bhikhabhai Chothabhai Makwana was also examined, whereafter such application is preferred. The application is preferred only with a view to see that the revisioners are pushed behind bars. According to Mr.Gondaliya, the whole incident is concocted. If such an incident had, in fact, occurred, the applicant Bhikhabhai Chothabhai Makwana would have, in ordinary course, lodged an FIR or would have approached the Court instead he does not do anything on that day and address a communication to the Commissioner of Police on next day. Mr.Gondaliya submitted that this appears to have done under legal advise as can be seen from the application itself. Mr.Gondaliya relied on decision of this Court in the case of Turabbhai Abdulhusain Patent Vs. Ajagarali

Onali Lokhandwala reported in 2004 (5) GHJ 307 and submitted that in such eventuality, strictest conditions may be imposed rather than cancelling the bail.

4. Revision Application is opposed to by learned APP Ms.Nandni Joshi. She submitted that there is a specific finding by the learned Judge as well as the police agency, having found substance in the allegations, has lodged Chapter Case. She submitted that trial has already commenced and it is posted on 17th August,2004 for further evidence. She submitted that when revisioners are found to have indulged into an activity in breach of conditions while releasing on bail, the Sessions Court was right in exercising powers under Section 439(2) of the Code of Criminal Procedure and therefore, Revision Application may be rejected.

5. At the outset, it may be noted that this being a Revision Application, scope of it is very limited. Learned advocate for the revisioners has not been able to point out any illegality or perversity in the order. Learned advocate only submitted that the Court should appreciate the fact situation from angle suggested by him. Meaning thereby that this Court should re-appreciate the material before the Sessions Court, which this Court should ordinarily refrain from doing while considering a Revision Application as per settled proposition of law.

6. It is not in dispute that while the revisioners were enlarged on bail, a condition was imposed that they should not tamper with the evidence of the prosecution nor should they threaten or intimidate the witnesses. The Sessions Court has found that the revisioners have threatened respondent no.2 to enter into compromise in the Sessions Case. For arriving at this conclusion he has relied on report which was called from the police as well as the Chapter Case registered against the revisioners.

7. Application made before the Sessions Court also reveals that the applicant - Bhikhabhai Chothabhai Makwana had clearly stated about the incident of 23rd December,2003 and about his having approached the police on 24th December,2003 itself. The Court has also given a finding that on 23rd December,2003 revisioners were present in the Sessions Court. Under the circumstances, with this clear findings, if the bail is cancelled, this Court does not deem it proper to interfere with the order in exercise of its revisional jurisdiction.

8. It would also be appropriate to note that the judgment which is relied upon by the learned advocate for the revisioners in the case of Turabbhai Abdulhusain (supra), no absolute proposition is laid down. That was a case where the trial had not commenced because records and proceedings were called for before this Court, whereas in the instant case the trial has already commenced, several witnesses are examined and it appears that it was lastly posted on 11thAugust,2004 and now it is posted on 17th August,2004 and therefore, it can be inferred that it is being expeditiously proceeded with. Under the circumstances, the judgment relied upon by the learned advocate would not be applicable to the facts of the present case and cannot help the revisioners.

9. The Revision Application, therefore, must fail and is rejected. Rule discharged. Interim relief granted earlier stands vacated.

(A.L.Dave,J.)

(vipul)